

Issue: Compliance/grievance procedure/documents; Ruling Date: October 10, 2006;  
Ruling #2007-1451; Agency: Department of Corrections; Outcome: premature –  
agency in compliance.



## ***Department of Employment Dispute Resolution***

### COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections  
Ruling No. 2007-1451  
October 10, 2006

The grievant has asked for a compliance ruling from this Department. She alleges that the Department of Corrections (DOC or the agency) failed to comply with the grievance procedure by not providing requested documents.

#### FACTS

The grievant is employed by the agency as a Corrections Officer. On June 12, 2006, the grievant received a Group III Written Notice with suspension, demotion, and a 10% reduction in pay. On July 16, 2006, the grievant initiated a grievance challenging the disciplinary action taken against her.

On August 10, 2006, following the third resolution step, the grievant made a request for documents under the Freedom of Information Act and § 8.2 of the *Grievance Procedure Manual*. On August 28, 2006, after the grievant apparently failed to receive a response to this request, her attorney sent a letter to an agency human resources analyst, advising the agency that it was out of compliance with the grievance procedure. On August 29, 2006, the grievant's attorney requested a compliance ruling by this Department regarding the agency's alleged noncompliance.<sup>1</sup>

In response, on September 20, 2006, this Department issued Ruling No. 2007-1433, in which we advised the grievant that her request for a compliance ruling was premature, as she had failed to give written notice of noncompliance to the agency head. The ruling further advised the grievant that if she intended to request a compliance ruling regarding her August 10, 2006 document request, "she must give written notice to the agency head within 10 days of the date of this ruling." The ruling explained that if the grievant gave timely notice to the agency head, this Department would stay the pending appointment of a hearing officer, but if the grievant failed to give such notice, this Department would appoint a hearing officer, who could address any remaining issues regarding document production.

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<sup>1</sup> The grievance was qualified for hearing by the agency head on August 17, 2006; and on August 23, 2006, the agency requested the appointment of a hearing officer. This Department received the grievant's request for a compliance ruling prior to making an appointment.

On September 25, 2006, the grievant, through her attorney, again requested a compliance ruling regarding the agency's alleged failure to provide documents. In her request, the attorney characterized the agency's action as a "refusal to provide documents requested in a September 1, 2006 FOIA request."<sup>2</sup> The September 1, 2006 FOIA request to which the attorney apparently refers is a letter to an agency Human Resource Officer asserting a failure by the agency to respond to the grievant's previous August 10, 2006 request for documents under FOIA and the *Grievance Procedure Manual*. Prior to making her September 25<sup>th</sup> request for a compliance ruling, the grievant did not give written notice of noncompliance to the agency head.<sup>3</sup>

### DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>4</sup> That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily without this Department's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.<sup>5</sup> If the party fails to correct the alleged noncompliance, the complaining party may request a ruling from this Department. In this case, the grievant's September 25, 2006 request for a compliance ruling is premature because the grievant has not shown that she first notified the agency head in writing of the alleged procedural violations, as required by the grievance procedure.

As a general rule, a party may raise a claim of noncompliance at any point in the grievance process. If such a claim is properly initiated prior to the appointment of a hearing officer, the grievance process will normally be stayed until the compliance matter is addressed.<sup>6</sup> However, because a request for the appointment of a hearing officer in this matter is pending with this Department and the grievant has apparently failed to give written notice of noncompliance to the agency head within 10 days of our September 20<sup>th</sup> ruling, this Department will not further stay the

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<sup>2</sup> This Department has no authority to enforce the provisions of the Virginia Freedom of Information Act. Rather, a person denied the rights and privileges conferred by FOIA must seek enforcement of FOIA's provisions in a court of law. See Va. Code § 2.2-3713(B).

<sup>3</sup> In the course of this Department's investigation, the grievant's counsel was asked by e-mail whether she had given written notice of noncompliance on behalf of the grievant, and if so, to please fax a copy of that document to EDR. The grievant's counsel responded by faxing a copy of the September 25, 2006 request for a compliance ruling and her September 1, 2006 letter to the Human Resource Officer.

<sup>4</sup> *Grievance Procedure Manual* § 6.1.

<sup>5</sup> *Grievance Procedure Manual* § 6.3.

<sup>6</sup> *Grievance Procedure Manual* §§ 6.1, 6.3, 8.2.

grievance process, but will instead appoint a hearing officer, who may address any remaining issues regarding document production upon request by a party.<sup>7</sup>

This Department's rulings on matters of compliance are final and nonappealable.<sup>8</sup>

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Claudia T. Farr  
Director

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<sup>7</sup> *Grievance Procedure Manual* § 8.2.

<sup>8</sup> Va. Code § 2.2-3003(G).